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No. 82-1776

In the Supreme Court of the United States

OCTOBER TERM, 1982

S. J. GROVES & SONS COMPANY,
a corporation,
Appellant,

v.

THE STATE OF ILLINOIS, Acting through its Division of Highways of the Department of Transportation,
Appellee.

On Appeal From The Supreme Court Of Illinois

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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ARGUMENT

The State of Illinois misconstrues the issues raised in this appeal. First, the state incorrectly suggests that the opinion below, which rejected a claim that the Illinois Court of Claims Act violates the United States Constitution, can rest on an independent state ground. (Motion to Dismiss at 1-3.) The only independent state issue in this

case is the Illinois Supreme Court's ruling that the Court of Claims Act does not violate the Illinois Constitution. That ruling is not challenged by this appeal.

Secondly, the State of Illinois contends that Illinois' sovereign immunity disposes of this case. (Motion to Dismiss at 2.) However, the State's contention that sovereign immunity has been retained by Illinois flies in the face of the Act at issue here and the Illinois Supreme Court's explicit statements directly on point. The Illinois Court of Claims Act provides for resolution of disputes arising out of contracts with the State of Illinois and for the recovery of money against the State. The Constitution of Illinois waived sovereign immunity to allow the legislature to provide for these contested claims, as the Illinois Supreme Court stated in this case:

> The comments of the General Government Committee of the 1970 constitutional convention that proposed language abolishing sovereign immunity, except as provided by the legislature, are indicative of a clear intent to put aside an anachronistic doctrine . . . while leaving the legislature with the opportunity to establish the procedure for processing any claim against the State.

(Appendix to Petition at 14a.)

The issue raised by this case is whether the Illinois legislature, having been granted the power to establish a method for resolving claims against the state, can set up an administrative procedure which produces advisory opinions voidable by either the legislature or the governor (see Jurisdictional Statement at 4 n.2), and which is devoid of any judicial oversight. *Monongahela Navigation Co.* v. *United States*, 148 U.S. 312, 327 (1893), and *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U.S. 287, 291 (1920),

hold that the Taking and Due Process provision of the United States Constitution require that disputes involving a determination of just compensation must be resolved or reviewed by a judicial tribunal. The Illinois Court of Claims Act ignores *Monongahela's* requirement. The failure of the Illinois Supreme Court to recognize the denial of fundamental rights inherent in the Illinois claims scheme warrants plenary review by this Court.

CONCLUSION

For the reasons stated above and those stated in the Jurisdictional Statement probable jurisdiction should be noted.

Respectfully submitted,

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